Supreme Court of the United States.

No. 234.—October Term, 1904.

The Supreme Lodge, Knights of Pythias, Plaintiff in Error, *vs.* Henrietta Meyer.	In error to the Supreme Court of the State of New York.

[May 29, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

The plaintiff in error is a corporation organized under an act of Congress approved June 29, 1894. This action was brought against it by defendant in error as payee in a certain benefit certificate issued by it to Emanuel Meyer, husband of Henrietta Meyer, dated September 20, 1894, whereby it insured his life in the sum of $2,000. The defendant in error obtained judgment, which was successively affirmed by the Appellate Division and by the Court of Appeals of New York. The judgment of affirmance was entered in the Supreme Court, to which the case was remitted, and this writ of error was then sued out.

There are two questions in the case, the place of the contract and the effect of the following provision in the certificate of insurance:

"And I hereby, for myself, my heirs, assigns, representatives and beneficiaries, expressly waive any and all provisions of law, now or hereafter in force, prohibiting or excusing any physician heretofore or hereafter attending me professionally or otherwise, from disclosing or testifying to any information acquired thereby, or making such physician incompetent as a witness; and hereby consent that any such physician may testify to and disclose any information so derived or received in any suit or proceeding wherein the same may be material."

This provision takes pertinence from another, whereby "it is agreed that if death shall result by self-destruction, whether sane or insane," the certificate "shall be null and void, and all claims on account of such membership shall be forfeited."

The case was submitted for a special verdict on the question "did Emanuel Meyer, the husband of the plaintiff in error, commit suicide?" The jury answered "No."

On the trial plaintiff in error offered the testimony of three physicians who attended Meyer, as to declarations made by him tending to show that he had taken poison with suicidal intent. It appeared that Meyer did not request the attendance of the physicians—indeed, protested against treat-

ment. The testimony was excluded under sections 834 and 836 of the Code of Civil Procedure of the State. Section 834 forbids any physician "to disclose any information which he acquired in attending a patient, in a professional capacity, and which was necessary to enable him to act in that capacity," and section 836 provides that section 834 applies "unless the provisions thereof are expressly waived upon the trial or examination . . . by the patient. . . . But a physician . . . may upon a trial or examination disclose any information as to the mental or physical condition of a patient who is deceased, which he acquired in attending such patients professionally, except confidential communications, and such facts as would tend to disgrace the memory of the patient, when the provisions of section 834 have been expressly waived on such trial or examination by the personal representatives of the deceased patient."

The Court of Appeals held that the physicians were "attending a patient in their professional capacity;" that the information that they acquired "was necessary to enable" them "to act in that capacity," and that their testimony was therefore properly excluded under sections 834 and 836. The court also held that the certificate of insurance was a New York contract. Judge Gray and Chief Judge Parker concurred in the former view, but dissented as to the application of the code sections. Plaintiff in error contests both sections. The argument is that (1) it appears from the testimonium clause of the certificate of insurance that it was signed and sealed by plaintiff in error at Chicago, Illinois, and hence is an Illinois contract, and must be construed with regard to the law of that jurisdiction, and as there is no evidence of what that law is it must be assumed to be what the common law of the State is, and under that law the testimony of the physicians was admissible. (2) We quote counsel: "The attempted application of sections 834 and 836 of the Civil Code of Procedure of the State of New York to the contract in the case at bar is a violation of the Federal Constitution."

These contentions may be said to have the same ultimate foundation, but regarding them as separate and independent, the first is based on the ground that plaintiff in error derived the right from its contract with Meyer to the testimony of the physicians, which right attended the contract in whatever forum suit upon the contract might be brought. This is certainly debatable. The general rule is that all matters respecting the remedy and admissibility of evidence depend upon the law of the State where the suit is brought. (*Northern Pacific R. R. Co.* v. *Babcock*, 154 U. S. 190; *Wilcox* v. *Hunt*, 13 Pet. 378; *Pritchard* v. *Norton*, 106 U. S. 124; *Bank of the United States* v. *Donnally*, 8 Pet. 361.)

However, if the certificate of insurance is not an Illinois contract, all the questions which depend upon that become irrelevant. We think it is

not an Illinois contract. Judge Gray, expressing the opinion of the Court of Appeals, disposed of the contention that the certificate of insurance is an Illinois contract briefly but completely. The learned judge said:

"With respect to the first of these questions [that the legislation of New York impaired the obligation of the contract between plaintiff in error and Myer] raised by the appellant, whatever other answers might be made to the applicability of the provision of the Federal Constitution relied upon, it is sufficient to say, now, that this contract was consummated in the State of New York and is to be governed, in its enforcement, by the laws of that State. The beneficiary was a resident of this State and there made his application for the insurance. The certificate, issuing upon the application, appears, from its language only to have been signed by the officers of the defendant at Chicago, in the State of Illinois, on September 20th, 1894; but upon it was printed the following clause: 'I hereby accept this certificate of membership subject to all the conditions therein contained,' and that had the signature of the applicant followed by the words, 'Dated at New York, this 28th day of September, 1894, attest: Louis Riegel, secretary section 2179, Endownment Rank, K of P.' By the terms of the certificate the agreement of the defendant was subject, not only to the conditions subscribed to by the member in his application, but 'to the further conditions and agreements hereinafter named,' and the clause containing his acceptance, above quoted, was one of those 'further agreements.' From these terms of the agreements of the parties the only natural conclusion is that the place of the contract was where it was intended, and understood, to be consummated. Its completion depended upon the execution by the member of the further agreement indorsed upon the certificate: namely, to accept it 'subject to all the conditions therein contained.' The contract was not completed, in the sense that it was binding upon either party to it, until it was delivered in New York after the execution by the member of the further agreement expressing his unqualified acceptance of its conditions. As a matter of fact, the promise of the defendant was to pay the insurance moneys to the plaintiff, who resided in New York; a feature giving additional local coloring to the contract. But the sufficient and controlling fact is that, by its terms, it was first to take effect as a binding obligation, when the required agreement on the year of the member was executed by him."

2. The ground of this contention is not made clear. The language of counsel points to the contract clause of the Constitution as that relied on, and to render it available makes the law of Illinois the obligation of the contract of insurance. But this can only be upon the supposition, which we have seen is erroneous, that the certificate of insurance was an Illinois contract, not a New York contract. Being a New York contract, the code sections did not impair its obligation. They were enacted before the contract was executed, and if they were a valid exercise of legislative power, and we have no doubt they were, it was competent for the State to enact the rule of evidence expressed in them. The case is in this narrow compass, and we need not further follow the details of the argument of counsel that the obligation of the contract of insurance was impaired.

But we may observe that there is no question in the case of the validity or the enforcement of the provision in the certificate of insurance against suicide. It is only of the testimony offered to prove suicide. Plaintiff in error sought to prove it by the testimony of a physician, and the attempt encountered the New York Code and the questions we have discussed.

Plaintiff in error further contends that, as in writs of error to the Circuit and District Courts of the United States, we are not restricted to constitutional questions, so in writs of error to a State court we may also decide all questions presented by the record and that it is open for us to decide whether the relation of doctor and patient existed between one of the witnesses and Meyer. This is attempted to be made out by that part of section 709 of the Revised Statutes, which provides: "The writ [to the final judgment or decree of a State court] shall have the same effect as if the judgment or decree complained of had been rendered or passed on in a court of the United States."

However this may be, in cases like that at bar, we accept the construction the State courts give to State statutes. It is manifest that the question submitted involves the construction of the State statute. Plaintiff in error is not helped by the decision in *Foley* v. *Royal Arcanum*, (151 N. Y. 196.) It was there decided that a waiver in a policy of insurance was valid under sections 834 and 836, as they then stood, and their subsequent amendment did not affect the waiver. But the certificate of insurance in the case at bar was made after the amendment to section 836. In *Holden* v. *Metropolitan Life Ins. Co.*, (165 N. Y. 113,) it was held that the statute, by virtue of the amendment, "in positive and express terms, requires the waiver to be made upon or at the time of the trial or examination," and "no one, except the personal representatives of the deceased patient, can waive the provisions of section 834, and it can be waived by them only upon the trial or examination where the evidence is offered or received." *Foley* v. *Royal Arcanum* was referred to and limited to the construction of the statute as it stood before amendment. The opinion of the Court of Appeals in the case at bar follows the Holden case and distinguishes prior cases.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.